
From: Keith Allred
Sent: Monday, May 16, 2011 9:38 AM
To: 'info@fusion-DLS.com'
Subject: NOTICE OF COMPLAINT

NOTICE OF FILING OF COMPLAINT IN U.S. DISTRICT COURT

FUSION DENTAL LABORATORY SOLUTIONS, INC.
6950 ALMADEN EXPRESSWAY #137
SAN JOSE CA 95120
AGENT FOR SERVICE OF PROCESS: REX HO
AGENT ADDRESS: 6950 ALMADEN EXPRESSWAY #137
AGENT CITY, STATE, ZIP: SAN JOSE CA 95120

COMPLAINT SEEKING DAMAGES AND INJUNCTIVE RELIEF FOR FEDERAL TRADEMARK INFRINGEMENT, FEDERAL TRADEMARK DILUTION, FALSE DESIGNATION OF ORIGIN, COMMON LAW TRADEMARK INFRINGEMENT, COMMON LAW UNFAIR COMPETITION, AND VIOLATION OF THE CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200 (UNFAIR COMPETITION) AND § 17500 (FALSE ADVERTISING)

SUMMARY: AS A RESULT OF DEFENDANT'S INFRINGEMENT OF GLIDEWELL'S REGISTERED MARKS, GLIDEWELL HAS INCURRED DAMAGES IN AN AMOUNT TO BE PROVEN AT TRIAL. DEFENDANT'S INFRINGEMENT OF GLIDEWELL'S REGISTERED MARKS IS DELIBERATE, WILLFUL, FRAUDULENT AND WITHOUT ANY EXTENUATING CIRCUMSTANCES, AND CONSTITUTES A KNOWING USE OF GLIDEWELL MARKS AND AN EXCEPTIONAL CASE WITHIN THE MEANING OF LANHAM ACT SECTION 35, 15 U.S.C. § 1117. GLIDEWELL IS THEREFORE ENTITLED TO RECOVER THREE TIMES THE AMOUNT OF ITS ACTUAL DAMAGES AND THE ATTORNEYS' FEES AND COSTS INCURRED IN THIS ACTION, AND PREJUDGMENT INTEREST. DEFENDANT HAS ENGAGED IN AND CONTINUES TO ENGAGE IN UNFAIR COMPETITION BY USING THE GLIDEWELL MARK, WITH THE INTENTION OF INTERFERING WITH AND TRADING ON THE BUSINESS REPUTATION AND GOODWILL ENGENDERED BY GLIDEWELL THROUGH HARD WORK AND DILIGENT EFFORT. DEFENDANT'S WRONGFUL USE OF THE GLIDEWELL MARK IS DELIBERATE, WILLFUL, AND IN RECKLESS DISREGARD OF GLIDEWELL'S TRADEMARK RIGHTS, ENTITLING GLIDEWELL TO THE RECOVERY OF PUNITIVE DAMAGES AND PERMANENT INJUNCTIVE RELIEF ENJOINING DEFENDANT AND ALL OTHERS ACTING IN CONCERT WITH AND HAVING KNOWLEDGE THEREOF, FROM USING THE GLIDEWELL MARK, AND ANY SIMILAR TRADE NAME OR MARK OR VARIANT THEREOF, OR OTHER "GENERIC PLUS 'BRUX'" MARK, AS A TRADE NAME, TRADEMARK, SERVICE MARK, DOMAIN NAME, OR FOR ANY OTHER PURPOSE

Sincerely,

Keith Allred
Glidewell Laboratories

4141 MacArthur Blvd.
Newport Beach, CA 92660
(800) 854-7256
www.glidewelldental.com

References (Willful Infringement)

(1) LMT – May 2011

(2) Rx

The image shows a dental lab order form from Fusion Dental Lab Solutions. The form is titled "Zirconia Restoration" and includes sections for "Patient Information", "Dentist Information", "Order Information", and "Restoration Details". The "Restoration Details" section includes a diagram of a tooth with a zirconia restoration, labeled "SHADE" and "Zirconia". The form also includes checkboxes for "Direct Finish*", "Coping Only", and "Bisque". The "Restoration Details" section includes a list of materials: "Fusion Solutions Zirconia*", "Procera by NOBEL BIOCARE", "Zeno by WIELAND", and "Full Solid Zirconia (Bruxer)". The form is dated "10/31/12" and includes a signature line for the dentist.

i.e., See from above: "Full Solid Zirconia (Bruxer)," below:

Zirconia Restoration:

- ☐ Direct Finish* ☐ Coping Only ☐ Bisque
- ☐ Fusion Solutions Zirconia*
- ☐ Procera by NOBEL BIOCARE
- ☐ Zeno by WIELAND
- ☐ Full Solid Zirconia (Bruxer)

(3) Previous communication -- SECOND NOTICE OF TRADEMARK INFRINGEMENT

From: Keith Allred
Sent: Tuesday, April 19, 2011 10:59 AM
To: 'Fusion Dental Lab Solutions'
Subject: BRUXZir-Fusion DL 2nd Notice.doc

SECOND NOTICE OF TRADEMARK INFRINGEMENT

April 19, 2011

TRANSMITTED VIA E-MAIL, FAX AND DELIVERED BY U.S. MAIL

Attn: Legal Department
Fusion Dental Lab Solutions
1525 McCarthy Boulevard, Suite 1000
Milpitas, California 95035

UNITED STATES

Tel: 408-333-9690
Fax: 408-273-6837
www.fusion-DLS.com
email: info@fusion-DLS.com

I, the undersigned, state UNDER PENALTY OF PERJURY that:

- I am an agent authorized to act on behalf of the owner of certain intellectual property rights ("IP Owner");
- I have a good faith belief that the listings identified below (by url, etc.) offer items or contain materials that are not authorized by the IP Owner, its agent, or the law, and therefore infringe the IP Owner's rights; and
- The information in this notice is accurate.

Pursuant to federal law your company is liable for the illegal trademark infringing activity where you have received legally adequate notice of such activity. Direct and contributory trademark infringement arises out of promoting via *Lab Management Today* and on your website the advertisement of "Full Solid Bruxer Zirconia" crowns made in China for outsourcing and sale to dentists.

Your failure to remove the infringing material from your website and promotional materials represents an inducement to others to infringe the IP Owners property rights resulting in unfair business practices under California law and significant damages resulting from the persistent, willful, and intentional infringement of the BRUXZir® mark. Accordingly, you may be held liable for inducing the trademark infringing activity of others after you have been issued legally adequate notice.

Furthermore, this is the second notice that your company has received regarding this violation of the Trademark Statute: **You have been formally asked to stop**

using this trademark. Your lack of cooperation is blatant defiance and sheer disregard for US Federal Law.

If these violations of the Trademark Statute persist, we intend to press charges, and to pursue litigation against your company. **It is in your overall best interest to immediately cease and desist from using the term "BRUX" in connection with your mark. The best way for you to protect your interests overall is to stop using it altogether.**

In compliance with common practice this notice of infringement has been issued before litigation has been initiated against you and others. Since there is a likelihood of engaging your company in Intellectual Property litigation proceedings, we suggest that you immediately seek the advice of your attorney. You should immediately notify the hosting company of your website and dental laboratories that you outsource to that these violations are occurring. To preclude litigation against you and your hosting company and outsourcing clients you must ensure that your webmasters and outsource clients immediately cease and desist from infringing upon the IP Owner's rights—on your website and on the websites of your outsource clients—in connection with sales of products that infringe the BRUXZir® trademark. Please feel free to forward this message to your attorney for advice. Your attorney may also contact me via email, if you are interested in settling this matter amicably.

Sincerely,
KEITH D. ALLRED
Attorney for Glidewell Laboratories
4141 MacArthur Blvd.
Newport Beach, CA 92660
Tel 949-440-2683
Fax 949-440-2787
Email kallred@glidewelldental.com

From the Trademark website:

Word Mark	BRUXZIR
Goods and Services	IC 010. US 026 039 044. G & S: Dental bridges; Dental caps; Dental crowns; Dental inlays; Dental onlays; Dental prostheses. FIRST USE: 20090606. FIRST USE IN COMMERCE: 20090606
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77761757
Filing Date	June 17, 2009
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	November 3, 2009
Registration Number	3739663
International Registration Number	1034335
Registration Date	January 19, 2010

Owner (REGISTRANT) James R. Glidewell, Dental Ceramic, Inc. DBA Glidewell Laboratories
CORPORATION CALIFORNIA Professional Services 4141 MacArthur Blvd. Newport Beach
CALIFORNIA 92660
Attorney of Record Keith D. Allred, Esq.
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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(4) Previous communication -- SECOND NOTICE OF TRADEMARK INFRINGEMENT

From: Fusion Dental Lab Solutions [mailto:info@fusion-dls.com]
Sent: Friday, January 21, 2011 5:03 PM
To: Keith Allred
Subject: Re: Fusion Dental.doc

To Whom It May Concern,

No, it is not pronounced the same.

Regards,

Fusion Dental Lab Solutions
Tel: (408) 333-9690
Fax: (408) 273-6837

From: Keith Allred
Sent: Friday, January 21, 2011 4:58 PM
To: Fusion Dental Lab Solutions
Subject: RE: Fusion Dental.doc

Attn: Fusion Dental

It is pronounced the same isn't it?

Sincerely,

Keith Allred
Glidewell Laboratories
4141 MacArthur Blvd.
Newport Beach, CA 92660

(800) 854-7256
www.glidewell dental.com

From: Fusion Dental Lab Solutions [mailto:info@fusion-dls.com]
Sent: Friday, January 21, 2011 4:42 PM
To: Keith Allred
Subject: Re: Fusion Dental.doc

To Whom It May Concern,

There is no "confusing similarity". The words "zirconia", "bruxer", "solid", "full" are all generic terms.

Regards,

Fusion Dental Lab Solutions
Tel: (408) 333-9690
Fax: (408) 273-6837

From: Keith Allred
Sent: Friday, January 21, 2011 4:33 PM
To: Fusion Dental Lab Solutions
Subject: RE: Fusion Dental.doc

Attn: Fusion Dental

Fortunately for my client trademark infringement is based on "confusing similarity" of marks and services, and marks can be confusingly similar even if not identical. The best idea is for you to consult with your trademark attorney about it.

Sincerely,

Keith Allred
Glidewell Laboratories
4141 MacArthur Blvd.
Newport Beach, CA 92660
(800) 854-7256
www.glidewell dental.com

From: Fusion Dental Lab Solutions [mailto:info@fusion-dls.com]
Sent: Friday, January 21, 2011 3:49 PM
To: Keith Allred
Subject: Re: Fusion Dental.doc

To Whom It May Concern,

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The words "zirconia", "bruxer", "solid", "full" are all generic terms. Bruxer is NOT Bruxzir, please do your research or look it up on the dictionary. For your information "again", BRUXER is a commonly generic used term of a "person" who grinds their teeth or a person with bruxism. Is "BruxZir" also a commonly generic used term of a person who grinds their teeth or a person with bruxism?

Regards,

Fusion Dental Lab Solutions
Tel: (408) 333-9690
Fax: (408) 273-6837

From: Keith Allred
Sent: Friday, January 21, 2011 11:42 AM
To: Fusion Dental Lab Solutions
Subject: RE: Fusion Dental.doc

**NOTICE Re: Infringement of Glidewell Laboratories' Trademark
BRUXZIR**

I am responding 21-Jan-2011 email below. I read your communication to be raising two issues which I will address in turn.

1. Assuming Full Solid Bruxer Zirconia is descriptive when applied to professional dental products, can those items be appropriated to one party's exclusive use? As you know, descriptive terms become exclusive trademarks when they acquire secondary meaning. Glidewell Laboratories has exclusively and extensively used the mark BRUXZIR in the dental industry. Unquestionably it has acquired secondary meaning, and it has the exclusive right to use the mark in the dental field, especially where Glidewell is catering to the same channels of trade.

2. Can Fusion Dental use the term if it is only using the term to describe its crowns and not as a trademark? It's a little late for that. You have confirmed in a written record below what already was abundantly clear: that Full Solid Bruxer Zirconia is claimed as the name for your goods, and not a descriptive term. The words "full" and "solid" and "zirconia" are, of course, the generic terms. Trademarks rights do, however, apply to the term BRUXER.

Under these circumstances, it is difficult to argue that Fusions Dental's continuing use of the mark is not willful trademark infringement. Nevertheless, unless it has to, Glidewell prefers resolving this in a business-to-business fashion without resort to the courts. If you are unwilling to promptly change the name of your full solid zirconia crowns, then we will have to go the litigation route.

Sincerely,

Keith Allred

Glidewell Laboratories
4141 MacArthur Blvd.
Newport Beach, CA 92660
(800) 854-7256
www.glidewelldental.com

From: Fusion Dental Lab Solutions [mailto:info@fusion-dls.com]
Sent: Friday, January 21, 2011 10:21 AM
To: Keith Allred
Subject: Re: Fusion Dental.doc

To Whom It May Concern,

The name of the crown is called Full Solid Bruxer Zirconia, which is the description of the type of crown we offer: A full solid bruxer zirconia crown for bruxers (patient of bruxism). Please read our advertisement precisely.

Regards,

Fusion Dental Lab Solutions
Tel: (408) 333-9690
Fax: (408) 273-6837

From: Keith Allred
Sent: Friday, January 21, 2011 10:05 AM
To: Fusion Dental Lab Solutions
Subject: RE: Fusion Dental.doc

NOTICE: TRANSMITTED VIA E-MAIL AND DELIVERED BY U.S. MAIL

I am pleased to represent Glidewell Laboratories in connection with its trademark and unfair competition matters. I have brought to your attention below that your company is currently marketing a full contour zirconia crown under the name BRUXER ZIRCONIA.

I explained to you that Glidewell has used the mark BRUXZIR in connection with full contour zirconia crowns. I also have informed you that Glidewell Laboratories owns the federal registration number for the mark. Like the Glidewell product, the Fusion product is also sold only to dentists and dental professionals.

Since both products are closely related and move in the identical marketing channels (to dentists) and the marks are virtually identical, there is little doubt that your firm's marketing of a crown under the mark BRUXER ZIRCONIA constitutes trademark infringement.

For the above reasons, we must insist that you immediately cease use of the infringing mark on all products, on your advertising and elsewhere. Should you not terminate use of the mark, Glidewell reserves its rights to take legal action to stop you from using the mark by

seeking an injunction to prevent the fabrication and/or importation of infringing goods or other relief as is deemed appropriate.

Sincerely,

Keith Allred
Glidewell Laboratories
4141 MacArthur Blvd.
Newport Beach, CA 92660
(800) 854-7256
www.glidewelldental.com

From: Fusion Dental Lab Solutions [mailto:info@fusion-dls.com]
Sent: Thursday, January 20, 2011 6:33 PM
To: Keith Allred
Subject: Re: Fusion Dental.doc

To Whom It May Concern,

For your information, the word "Bruxer" is a very common clinical term for a person with bruxism.

Regards,

Fusion Dental Lab Solutions
Tel: (408) 333-9690
Fax: (408) 273-6837

From: Keith Allred
Sent: Wednesday, January 19, 2011 3:27 PM
To: info@fusion-DLS.com
Subject: Fusion Dental.doc

Trademark Infringement – BruxZir® Zirconia (LIKELIHOOD OF CONFUSION)

January 19, 2011

TRANSMITTED VIA E-MAIL AND
DELIVERED BY U.S. MAIL

Fusion Dental Lab Solutions
1525 McCarthy Boulevard, Suite 1000
Milpitas, California 95035

Attn: President

Re: Infringement of Glidewell Laboratories' Trademarks -- BruxZir®

The serious matter of your infringement of my client's proprietary property rights in connection with the unauthorized use Glidewell Laboratories' registered trademarks in your advertising has come to our attention.

Glidewell Laboratories has for years used the mark BRUXZIR both nationally and internationally to identify its dental laboratory goods and services in the US and its CE certified BruxZir® zirconia milling blanks in Europe. The company enjoys considerable good will associated with its use of the aforesaid mark.

Your promotion in *Lab Management Today* of Full Solid Bruxer Zirconia is using a similar mark where there is an appreciable likelihood of confusion and a palming off goods by an unauthorized substitution of one brand for the brand ordered, which in this instance is a deliberate misappropriation of intellectual capital for commercial purposes that is actionable unfair competition under California law (California Business and Professions Code §17200)

Under federal law, Trademark infringement is presumptively an unfair exploitation of the monopoly privilege that belongs to the owner of the mark. Infringement is a 'tarnishment' of the owner's mark and results in "brand confusion" and the likelihood of 'initial interest' confusion as to the actual identity of the source of the goods and services.

For the above reasons, we must insist that you immediately cease use of the infringing marks in your promotions and elsewhere. Should you not terminate use of the mark, Glidewell Laboratories reserves its rights to take legal action to stop you from using the mark by seeking an injunction, monetary relief, and attorney fees.

Please contact me, or have your attorney contact me, within ten days of receipt of this communication if you are unsure about the appropriate steps that you must take to avoid liability for your refusal to discontinue your use of the infringing marks.

Your prompt attention is appreciated.

KEITH D. ALLRED

Attorney for Glidewell Laboratories

4141 MacArthur Blvd.

Newport Beach, CA 92660

Tel 949-440-2683

Fax 949-440-2787

Email kallred@glidewelldental.com

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